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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-479

STANLEY D. EDMONDS,

Petitioner,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF AMERICAN EXPORT LINES, INC.; AMERICAN TRADING TRANSPORTATION CO., INC.; CENTRAL GULF STEAMSHIP CORPORATION; CROWLEY MARITIME CORP.; DELTA STEAMSHIP LINES, INC.; FARRELL LINES INCORPORATED; GULF OIL CORPORATION; THE HANNA MINING CO.; HUDSON WATERWAYS CORP.; INTERNATIONAL OCEAN TRANSPORT CORP.; INTERSTATE OIL TRANSPORT CO.; LAKE CARRIERS' ASSOCIATION; LYKES BROS. STEAMSHIP CO., INC.; MARINE TRANSPORT LINES, INC.; MARITIME OVERSEAS CORPORATION; MOORE-McCORMACK LINES, INC.; MOUNT SHIPPING, INC.; NATIONAL TRANSPORT CORP.; OGDEN MARINE, INC.; PUERTO RICO MARINE MANAGEMENT, INC.; SEA-LAND SERVICE, INC.; VANCOR STEAMSHIP CORP.; WATERMAN STEAMSHIP CORP.; and PACIFIC MERCHANT SHIPPING ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

American Export Lines, Inc., et al., have obtained the consent of the parties to file a Brief in Support of the

Petition for a Writ of Certiorari to the Fourth Circuit which is appended to this Brief.

INTEREST OF AMERICAN EXPORT LINES, INC., ET AL.

Amici curiae consist of twenty-three individual American steamship companies whose operations are nationwide, together with Pacific Merchant Shipping Association, a voluntary association of American steamship companies[1] whose major operations and headquarters are primarily on the West Coast of the United States. Certainly they are representative of both American and foreign steamship companies which do business in the United States in that they share a common exposure to personal injury claims by longshoremen and other harbor workers and are constantly engaged in such litigation in various federal district courts of the United States. Although precise statistics are not available for all of the vessel owners included as *amici curiae,* the seven members of Pacific Merchant Shipping Association alone had pending against them in September, 1978, a total of 862 lawsuits for injuries to longshoremen and harbor workers occurring since November 26, 1972, which were subject to 33 U.S.C.A. § 905(b) (1976 Supp.), the new subsection of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.* (1976), *amending* 33 U.S.C. §§ 901 *et seq.* (1970), which became effective that date and which this Court is now asked to construe. The cases pending against all of the shipowners comprising *amici curiae* far exceed that substantial number.

[1] Alaska Hydro-Train (a division of Crowley Maritime Corporation), American President Lines (including American Mail Lines), Farrell Lines Incorporated, Matson Navigation Company, Prudential Lines, Inc., States Steamship Company and United States Lines, Inc.

Amici curiae believe *Edmonds*[2] was correctly decided as a matter of pure statutory construction, proper interpretation of the legislative history of the amended Longshoremen's Act and an equitable distribution of the financial risk when two parties are concurrently at fault for an injury-producing waterfront accident. However, *amici curiae's* large number of vessels operate in many jurisdictions where the issues presented here are unresolved. Additionally, because of the split of authority in different circuits, *amici curiae* are now subjected to differing rules of law in the ports in which their vessels call. Thus, for the many reasons ably expressed in the petition itself and in the dissenting opinion in *Edmonds, amici curiae* urge this Court to resolve those issues finally.

Amici curiae are vitally interested in having the Longshoremen's Act interpreted in a way that will result in achieving the broad purposes of the 1972 amendments by providing harbor workers with the ample benefits and long-term security which the Act provides; and by ensuring that litigation will be equitably determined in accordance with the overall aims of the amendments and current views on the equitable distribution of loss in maritime cases.

REASONS FOR GRANTING THE WRIT

Amici curiae concur with petitioner that *Edmonds* presents an important question of federal law which should be resolved by this Court in view of the sharply conflicting decisions between various federal courts.

I.

THERE IS A SHARP CONFLICT BETWEEN CIRCUITS.

Petitioner accurately states that there is a clear conflict between the Fourth Circuit's *Edmonds* decision

[2] Now officially reported, *Edmonds v. Compagnie Generale Transatlantique,* 577 F.2d 1153 (4th Cir. 1978).

on the one hand, and the decisions of the Ninth Circuit in *Shellman v. United States Lines,* 528 F.2d 675 (9th Cir. 1975), *cert. denied,* 425 U.S. 936 (1976) and *Dodge v. Mitsui Shintaku Ginko K.K. Tokyo,* 528 F.2d 669 (9th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976) and of the Fifth Circuit in *Samuels v. Empresa Lineas Maritimas Argentinas,* 573 F.2d 884 (5th Cir. 1978) on the other hand. The Fourth Circuit recognized that its decision created a conflict between circuits when Chief Judge Haynsworth, speaking for the majority, stated:

> We are aware, of course, that our decision today is in conflict with decisions in the Fifth and Ninth Circuits.

Petitioners' Appendix at A59, 577 F.2d at 1156 (citations omitted).

Petitioner is also correct in stating that in pure maritime litigation the Fourth Circuit stands alone in granting the vessel owner an "equitable credit" as it has now come to be known. The equitable credit, however, was initially termed "Murray credit" even in maritime cases because of its progenitor, *Murray v. United States,* 405 F.2d 1361 (D.C. Cir. 1968). In *Murray,* the District of Columbia Circuit held that an injured employee could recover only one-half of his proven damages from a negligent third-party, based on the theory that by accepting workmen's compensation from his concurrently negligent employer he had settled half of his claim. *Id.* at 1365-66.

While the Murray Credit has not been adopted outside the District of Columbia Circuit, it was later reaffirmed there in *Dawson v. Contractors Transport Corp.,* 467 F.2d 727 (D.C. Cir. 1972), whose significance is heightened by the fact that Dawson was covered by the Longshoremen's Act. In maritime cases, however, even those courts favoring the Equitable Credit rejected the Murray Credit since it divided damages equally

irrespective of the relative degrees of fault of the responsible parties. *See Shellman v. United States Lines Operators, Inc.,* 1975 A.M.C. 362, 368 (C.D. Cal. 1974); *Frasca v. Prudential-Grace Lines, Inc.,* 1975 A.M.C. 1130, 1144 (D. Md. 1975); *Croshaw v. Koninklijke Nedlloyd, B.V. Rijswijk,* 398 F. Supp. 1224, 1232-33 (D. Ore. 1975). Significantly, those courts favoring the Equitable Credit rejected *Murray* for the identical reasons the Supreme Court, in *United States v. Reliable Transfer Co.,* 421 U.S. 397 (1975), overruled years of precedent awarding divided damages in collision cases because of their innate unfairness.

The conflict between circuits highlights the similarly conflicting and divided views of district courts and state courts in cases handed down since the enactment of the 1972 amendments to the Longshoremen's Act. For example, Judge Skopil of the District of Oregon, relying on this Court's decision in *Reliable Transfer,* stated in *Crowshaw v. Koninklijke Nedlloyd, B. V. Rijswijk,* 398 F. Supp. 1224 (D. Ore. 1975):

> The 1972 amendments expressly authorize comparative negligence. Congress has left the mechanics of its application to the courts, as is customary.

Id. at 1233. But Judge Skopil, despite his own contrary conviction, felt bound to follow the views of Chief Judge Belloni in *Hubbard v. Great Pacific Shipping Co., Monrovia,* 404 F. Supp. 1242 (D. Ore. 1975), and denied a credit to the vessel owner whose fault for the injury-producing accident was less than that of the injured longshoreman's employer.

Indeed, Judge MacKenzie of the Eastern District of Virginia, from whose decision the *Edmonds* appeal was taken to the Fourth Circuit, expressly stated that he "*reluctantly*" denied granting the vessel owner a credit because he, as a district judge, felt that he should follow the higher authority of the Ninth Circuit in *Shellman*

and *Dodge*. Memorandum Order of Judge John A. MacKenzie, March 3, 1976, Petitioners' Appendix A15, A20.

There are numerous other examples of widely divergent views of experienced judges at all levels, the majority of which have been cited by Petitioner and need not be recited again herein, which demonstrate the clear need to have this Court resolve the uncertainty which now exists throughout all of the circuits faced with maritime personal injury litigation.

II.

PRIOR DECISIONS OF THIS COURT ARE IN APPARENT CONFLICT.

In a factual setting similar to the one presented herein, the Court held that a shipowner could not obtain contribution from a concurrently negligent stevedore. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282 (1952). One year later, the Court held that a shipowner was not entitled to have its liability to an injured longshoreman reduced by the amount of compensation payments made by the longshoreman's concurrently negligent employer, since that would be the equivalent of contribution forbidden by *Halcyon*. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953). Since the enactment of the 1972 amendments to the Longshoremen's Act, the Court has noted that the "factors underlying our decision in *Halcyon* still have much force." *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*, 417 U.S. 106, 112 (1974). These three landmark cases have been relied upon in every appellate decision to date questioning reduction of damages assessed against third parties when the injured worker's employer is concurrently negligent. *See Zapico v. Bucyrus-Erie Co.*, 579 F.2d 714, 724-725 (2d Cir. 1978); *Landon v. Lief Hoegh and Co., Inc.*, 521 F.2d 756, 759-61 (2d Cir. 1975), *cert. denied*, 423 U.S. 1053 (1976); *Samuels v.*

Empresa Lineas Maritimas Argentinas, 573 F.2d 884, 888 (5th Cir. 1978); *Dodge v. Mitsui Shintaku Ginko K.K. Tokyo*, 528 F.2d 669, 670-73 (9th Cir. 1975); *Shellman v. United States Lines*, 528 F.2d 675, 678-80 (9th Cir. 1975).

Interestingly, Chief Judge Haynsworth's *en banc* opinion in this case failed to cite any of the three cases relied upon by other circuits. Instead, he relied upon this Court's opinion in *Reliable Transfer*, which advocated the allocation of "liability for damages according to comparative fault whenever possible." 421 U.S. at 411. While *Reliable Transfer* was decided two days before argument of the appeal in *Landon*, it was cited in neither that case nor in the subsequent appellate opinions in *Samuels*, *Shellman*, or *Dodge*. Judge Friendly cites *Reliable Transfer* in *Zapico*, 579 F.2d at 725, but only for a proposition totally unrelated to the apportionment of fault holding for which *Reliable Transfer* is best known.

The implications of *Halcyon*, *Hawn* and *Cooper Stevedoring* are clearly inconsistent with the apportionment of liability according to fault as approved in *Reliable Transfer*. Perhaps this explains the failure of any appellate court to date to analyze all of these opinions and suggest some accommodation of their conflicting legal tenets. Or perhaps the panels felt that one or more of the opinions was distinguishable. *Reliable Transfer*, for example, dealt only with property damage in collision cases, while in neither *Halcyon*, *Hawn* nor *Cooper Stevedoring* was the Court called upon to determine the validity of a credit defense such as that approved by the Fourth Circuit below in *Edmonds*.

Regardless of the distinguishing features of these Supreme Court cases, each provides some guidance by analogy. Where, as here, that guidance is inconsistent,

it is appropriate for this Court to step in and eliminate any discrepancies through a clear directive to the courts below. This is particularly true in this instance since "the Judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime . . . ." *United States v. Reliable Transfer Co., Inc.*, 421 U.S. at 409.

CONCLUSION

The three parties concerned with the outcome of this litigation — the injured worker, the compensation carrier for the employer and the vessel — are in agreement that this Court should review the decision of the Fourth Circuit. *Amici curiae* respectfully submit their reasons are convincing: this important question of the interpretation of a newly amended federal statute should be reviewed and decided by this Court so that it will have uniform application in all maritime jurisdictions.

Respectfully submitted,

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October 9, 1978

EXHIBIT 1

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CONSENT TO THE FILING OF BRIEFS AMICI CURIAE ON BEHALF OF AMERICAN EXPORT LINES, INC., ET AL.

We, the undersigned, counsel for the respective parties in the above-styled Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, hereby consent to the filing of a brief *amici curiae* on behalf of American Export Lines, Inc., et al. Should the Petition be granted by this Honorable Court, we further consent to the filing of a brief *amici curiae,* on the merits, on behalf of the same parties in

support of the Respondent, Compagnie General Transatlantique.

C. ARTHUR RUTTER, JR.,
Attorney for Stanley D. Edmonds, Petitioner

Dated: Sept. 8, 1978

CHARLES F. TUCKER,
Attorney for Compagnie Generale Transatlantique, Respondent

Dated: September 11, 1978